

DOCKET FILE COPY ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of)
)
Policies and Rules for the)
Direct Broadcast Satellite Service)

IB Docket 98-2

APR 6 1998
FCC

COMMENTS OF MICROCOM
ANCHORAGE, ALASKA

MICROCOM
6927 Old Seward Highway
Suite 203
Anchorage, AK 99518
907-349-0016

Chuck Schumann
Vice President

April 2, 1998

No. of Copies rec'd
List ABCDE

049

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
APR 6 1998
FCC MAIL ROOM

In the Matter of)
) IB Docket 98-21
Policies and Rules for the)
Direct Broadcast Satellite Service)

COMMENTS OF MICROCOM – ANCHORAGE, ALASKA

MICROCOM applauds the Commission's concern about providing DBS service to Alaska and Hawaii. We have three years of experience with DBS around Alaska and we welcome the opportunity to both review the progress of DBS as a factor in the Alaska television market and offer recommendations on how to make it more competitive. Pursuant to the Notice of Proposed Rulemaking released by the Commission on February 26, 1998, in the above captioned proceeding, MICROCOM, hereby submits these comments.

I. INTRODUCTION

MICROCOM is an Alaskan-based distributor of TVRO and DBS products to all segments of the direct-to-home ("DTH") satellite television industry in Alaska. We supply Alaskan dealers with satellite television equipment and value added system integration services.

At the present time there is only one DBS service in general use in Alaska. Echostar (Dish Network) provides coverage from the 119 degree slot over most of the state except for the Aleutian Peninsula and the far northwest. Dish sizes range from 1.0 meter in Southeast Alaska to 3.0 meters on the North Slope and west coast. Direct TV provides coverage of Southeast Alaska and some coverage in South Central and the Aleutian Peninsula. However those systems in the South Central and the Aleutian Peninsula do not receive all channels due to variations in the output of transponders. The 101 degree DBS slot cannot realistically provide coverage to most of Alaska because of low elevation angles. Only slots west of 101 degrees can provide a reasonable prospect of coverage without terrain masking. Providing DBS services to all communities in the state may still not be possible with existing Ku band satellite technology because they are spread over a distance of 2000 miles east to west and 1200 miles north to south. However, please note that DBS provides basic television service over large parts of the state that have no alternative to this satellite delivery.

From a practical standpoint, DBS is not a price competitor to cable service in Alaska, however, in some areas it is a quality competitor. The typical DBS system in Alaska uses a 1.8 meter dish and retails for \$800 with additional charges of \$400 or more for installation. While we applaud the FCC's rule preempting local zoning restrictions on satellite dishes used in the DTH service specifically allowing larger dishes in Alaska, we do not think that DBS can compete with cable until certain things happen. First, the dish size must become more socially acceptable (1 meter or less). Second, the retail prices must decline to a point where consumers see a payback on their investment in DBS through lower programming charges within a reasonable timeframe. Along this line the

Library of Congress decision to charge DBS providers higher per subscriber copyright fees than cable operators is not helping.

II. Specific Comments to Proposals in FCC Docket 98-21

A. Paragraph 33. DBS Geographic Service Requirements

Comment: The Commission is seeking to provide important MVPD competition in Alaska and Hawaii by retaining the DBS geographic service requirements from Section 100.53 into the new Section 25.146(d). We support retaining this provision, but to meet the goal of providing MVPD competition, some type of service level must be defined.

Recommendation: A DBS provider should be considered as providing service to Alaska, when the following conditions are met:

- a. The satellite(s) provides sufficient energy density over the rail belt area (spanning from Fairbanks to Seward) and Southeast Alaska (Haines to Ketchikan) allowing the use of satellite dishes of 1 meter or less.
- b. The satellite provides sufficient energy density to cover as much of the remainder of the state as technically feasible with dish sizes of 3.0 meters or less in the Aleutians and 1.8 meters for the mainland.

Discussion: The rail belt of Alaska and Southeast combine to cover 80% of the population of the state. Our experience in the market indicates consumers will much

more willingly accept a 1 meter dish for installation in competition with cable. The competition in this respect is based on higher quality of service and not based on price. For price competition to exist dish sizes must be below 1 meter.

B. Paragraph 34. Commission actions to improve DBS service to Alaska and Hawaii

(1) Comment: The DBS auctions resulted in multiple owners of frequencies at various orbital slots. While some alliances have developed in this (DirecTV and USSB as well as Directsat and EchoStar), this multiple ownership at 119 degrees has resulted in unused capacity that could be used to enhance existing service to Alaska.

Recommendation: The Commission should consider a requirement for frequency owners at the various orbital slots to employ available capacity in cooperative agreements similar to the DirecTV/USSB model.

Discussion: We view orbital slots kind of like telephone poles. There is no reason to use three poles where one will do. Hence the concept of joint use poles. If we specifically focus on the 119 degree slot, we see several possible outcomes that are conditioned on other decisions pending in front of the Commission. Rather than focus on these decisions, we would like to identify consequences of these decisions that would not be consistent with providing DBS service to Alaska.

- Tempo begins service on its existing satellite using a format and conditional access system preventing the use the existing base of installed EchoStar receivers from receiving the programming. If consumers wanted to view this programming they would then have to purchase an additional receiver and supporting hardware.
- Tempo offers a programming package that duplicates much of the existing Dish Network programming. While this would certainly provide competition on program lineups, it would not enhance the position of DBS as a competitor to cable as much as a cooperative agreement between EchoStar and Tempo similar to the DirecTV/USSB alliance. The net result will be offering more of the same and a lesser quality package when wireless and wired cable provides digital programming.
- If Tempo uses the frequencies at 119 degrees, the EchoStar response could result in using more of their 148 degree satellite capacity to provide regional stations in the large markets of the western US. Consequently the satellite with potentially the best coverage of Alaska and Hawaii will be carrying a large number of network channels the Alaska DBS subscribers are not allowed to receive under current rules.

By requiring cooperative agreements and designating the “owner of the pole”, we feel the Commission can facilitate better DBS service within Alaska and Hawaii. Ideally Alaska and Hawaii will have access to multiple providers

offering a competitive choice of 200 channels or more. This would appear to be a sound business decision, but to date the market has been acting in some strange ways.

- (2) Comment: Rural areas in the 48 states generally currently have or will have some access to major network broadcasters from their region either through translators, DBS, or basic cable service. In rural areas of Alaska, there is limited or no access to any regional broadcaster and major network access is through the broadcast affiliates carried by DBS or DTH C band providers.

Recommendation: We feel there may be a compelling public interest served by requiring DBS operators serving Alaska to provide some Alaska based broadcast and government channels. This should be a part of the public service offerings required of DBS operators.

Discussion: The State of Alaska has transmitted television by satellite to bush communities for more than twenty years. This has been a very costly service to operate and recently has converted to a compressed digital format. The State uplinks an Anchorage network broadcast station on a rotating basis, public television from Fairbanks or Bethel, and State legislative sessions from Juneau. In addition, one Alaska broadcast station with local broadcast licenses in Fairbanks, Juneau, and Anchorage is uplinking its signal around the state. Combined these services offer a maximum of 4 channels. The receiving

equipment is expensive by DBS standards, costing village cable operators more than \$2000 per channel. DBS offers the opportunity to expand on this service by reducing the cost of receiving equipment and potentially inducing other broadcast stations to invest in uplinks. However, current economic tests applied to Alaska markets would not make this reasonable for a DBS operator. Making carriage of regional Alaska channels part of the public service commitment of DBS would provide residents of rural Alaska affordable access to “local” programming.

- (3) Comment: The Commission is currently reviewing the case for applying the “must carry” rule for local retransmission to DBS operators. This rule potentially affects the quality and competitiveness of DBS services in Alaska.

Recommendation: “Must carry” should only be mandated on DBS service providers when it fulfills a compelling public interest and the bandwidth is available to do it without denying lifeline service to rural Alaskans.

Discussion: For the same reason that we recommend the commission require cooperative agreements between frequency owners and satellite provider to offer the widest range of service to DBS subscribers. Adopting a “must carry” rule for DBS will only further marginalize Alaska and Hawaii by populating scarce satellites with channels we are not allowed to watch. If “must carry” is enforced on DBS providers, then there may not be room for any Alaska originated network channels as channels are allocated to the primary markets.

(4) Comment: Exclusive programming agreements between DBS operators and programming providers effectively limit the possible DBS service offerings in Alaska and Hawaii when the DBS operator cannot serve the Alaska and Hawaii markets.

Recommendation: Prohibit exclusive programming agreements between DBS operators and programming providers unless the DBS operator meets the criteria of providing service to Alaska and Hawaii.

Discussion: The exclusive agreement between the NFL and DirecTV for “NFL Sunday Ticket” is not in the public interest as it effectively denies access to a comparable service to DBS subscribers in Alaska and Hawaii. Other than dish size, this is the single largest complaint of existing and potential DBS customers in Alaska. We can only hope the NFL does not extend the exclusive agreement to include the Super Bowl.

C. Paragraph 36. Warehousing of western channels.

Comment: Warehousing of western channels or even those channels in the two full CONUS positions providing coverage of Alaska and Hawaii should be discouraged and result in loss of licenses.

Recommendation: In addition to reclaiming unused western channels, the Commission should also consider reclaiming unused channels at any slot where there is available satellite capacity without regard to ownership of that capacity. Action to reclaim those channels should commence within 90 days of failing to exploit available capacity.

Discussion: Channel capacity can be warehoused in many ways to the detriment of providing DBS services to Alaska and Hawaii. Eastern channels could be warehoused and affect the use of full CONUS channels. Full CONUS channels can be warehoused with the same effect. Unused channels when the satellite capacity is already in orbit to use them is not in the public interest or the long term competitiveness of DBS as an alternative MPVD provider.

D. Paragraphs 54-65. Cross ownership of DBS and cable.

Comment: Ownership of more than one full CONUS orbital position will probably result in less choices for the Alaska consumer especially if cross ownership involves both the 110 and 119 degree slots. However, this must be taken in the context of the comments in paragraph B(1) above.

Recommendation: Continue the “one time” restriction and impose limitations preventing ownership of channels in no more than one full-CONUS position.

Discussion: We view the issue as one of control. Any operator owning slots at more than one CONUS position is in the position of limiting the attractiveness of a particular DBS service provider by delaying use of frequencies while staying within the letter of the Commissions rules on developing the DBS market. This is very much the issue at the 119 degree slot and has direct effect on the competitiveness of DBS services in Alaska. Tempo's failure to exploit its frequencies at 119 degrees even though it could have either chosen to negotiate an agreement with EchoStar to use their capacity or subsequently used their own satellite is the best example of this.

III. Summary

To conclude here is a brief summary of the issues of interest to Alaska.

- Establish criteria for defining service standards for Alaska and Hawaii.
- Insure available capacity is employed wisely and warehousing is strictly discouraged.
- Establish policies encouraging DBS transmission of Alaska originated broadcast and government television programming as a public service.
- Do not enforce "must carry" on the DBS industry as this limits programming choices.
- Prohibit exclusive programming agreements unless the DBS provider serves all 50 states.
- Continue to limit DBS channel ownership interests to a single full CONUS slot.